U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROL Y. WEBBER and U.S. POSTAL SERVICE,
POST OFFICE, Reseda, CA

Docket No. 00-1830; Submitted on the Record;
Issued February 19, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has greater than an 11 percent permanent impairment of the left lower extremity and a 6 percent impairment of the right lower extremity for which she received a schedule award; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

On June 2, 1992 appellant, then a 27-year-old letter carrier, was injured in the performance of duty when she was walking and dislocated her knee. The Office accepted the claim for a subluxation of the right patella and bilateral chondromalacia. On April 3, 1993 appellant underwent right lateral release for persistent patellofemoral pain. She also had a left knee arthroscopy with lateral and plica resection on February 6, 1996, and a left knee arthrotomy with lateral release and a McKay procedure with tibia tubercle elevation on October 8, 1998. She returned to work in a modified position effective August 31, 1999.

On September 9, 1999 appellant filed a claim for a schedule award.

In an October 4, 1999 report, appellant's treating physician, Dr Jerome R. Friedland, an orthopedist, noted physical findings including range of motion of 0 to 145 degrees for appellant's left knee and 0 to 155 degrees for the right knee. He found no effusion or crepitation and recorded measurements of the patella, bilaterally. Dr. Friedland opined that appellant's knee condition was permanent and stationary with factors of permanent subjective disability and pain on prolonged squatting, kneeling or bending. He stated:

> "The factors of permanent objective disability are: (1) scar and keloid on the left knee measuring approximately 15 centimeters which is well healed; (2) discomfort and paresthesia along the anterolateral aspect of her thigh from the iliac crest wound as a result of the previous bone grafting of the Maquet procedure which still causes some occasional paresthesia in that distribution; and (3) a loss of about 10 percent of the flexibility of her left knee compared to her right knee."

Because there was no medical opinion evidence addressing the extent of appellant's permanent disability in terms of the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), the Office forwarded a copy of the medical record to Dr. Leonard A. Simpson, an Office medical consultant Board-certified in orthopedic surgery. In a report dated January 30, 2000, Dr. Simpson reviewed the medical record and stated:

> "[T]here is an October 4, 1999 report authored by the evaluating/treating orthopedic surgeon, Jerome R. Friedland, M.D. Pain is described as frequent to constant mild-severe pain on prolonged squatting, kneeling and climbing, with pain decreased with rest, icing and the use of nonsteroidal medication. These subjective complaints would be graded a maximal Grade IV as per the Grading Scheme, found in Chapter 3, fourth edition of the A.M.A., *Guides*.[1] This would be pain and/or altered sensation that prevents certain activities, or an 80 percent grade of a maximal 7 percent (femoral nerve),[2] equivalent to a 5.6, or rounded off to 6 percent impairment for pain factors. Range of motion of 0/0 through 145/155 would be rated 0, as per Table 41, Chapter 3, fourth edition of the A.M.A., *Guides*.[3] The only atrophy noted was ½ inch left thigh atrophy, equivalent to 1.27 cm [centimeter], or equivalent to a 5 percent impairment as per Table 37, Chapter 3, same edition of the A.M.A., *Guides*.[4] Utilizing this method and the Combined Values Chart: the 6 percent impairment for pain factors, combined with the 0 percent for loss of motion, combined with the 5 percent for left-sided thigh atrophy would be equivalent to an 11 percent impairment of the left lower extremity or leg.[5] On the right there would be a 6 percent impairment for pain, combined with 0 [percent] for loss of motion, combined with 0 [percent] for atrophy/weakness, or a 6 percent impairment of the right lower extremity or leg.
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> "One might consider calculating an award based on Tables 62 and 64. In this particular case, the records indicate that x-rays reveal that the patellofemoral space was well maintained, and there thus would be no impairment based on cartilage-interval loss. However, the exam[ination] did reveal trace patellofemoral 'crepitation' on the right, and 0 [percent] on the left. For the right lower extremity, there would be a 5 percent impairment based on the footnote attached to Table 62.[6] The records state that the individual underwent partial meniscectomy -- apparently on the left -- on February 6, 1996, and this would be assessed a 2 percent impairment of the left lower extremity or leg.[7] This second

[1] Table 11, page 48.

[2] Table 68, page 89.

[3] Table 41, page 78.

[4] Table 37, page 77.

[5] Combined Values Chart, page 322.

[6] Table 62, page 83.

[7] Table 64, page 85.

method arrives at an award of 5 percent right lower extremity and 2 percent left lower extremity, which is lower than the first method.

"This reviewer would recommend adopting the higher award of an 11 percent impairment of the left lower extremity, or leg, and a 6 percent impairment of the right lower extremity, or leg: with date of maximum medical improvement reached by October 4, 1999, approximately one year following the left McKay procedure."

In a decision dated February 24, 2000, the Office issued a schedule award for an 11 percent permanent impairment of the left leg and 6 percent permanent impairment of the right leg. The period of the award was from January 13 to February 26, 2000.

By letter dated April 7, 2000, appellant requested reconsideration listing 26 "Things Pertaining to Bilteral Knee Condition." She did not submit any additional medical evidence.

In a decision dated April 17, 2000, the Office denied appellant's request for reconsideration on the merits.

The Board finds that appellant has no greater than 11 percent permanent impairment of the left lower extremity and 6 percent impairment of the right lower extremity for which she received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act[8] and its implementing federal regulation,[9] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of specified members, functions or organs of the body. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.[10] However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* have been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[11]

The A.M.A., *Guides* were prepared to establish reference tables and evaluation protocols which, if followed, may allow the clinical findings of the physician to be compared directly with the impairment criteria and related to impairment percentages. While the medical opinion of the

[8] 5 U.C.S. § 8107.

[9] 20 C.F.R. § 10.404 (1999).

[10] 5 U.S.C. § 8107(c)(19).

[11] *See* 20 C.F.R. § 10.404 (1999).

treating physician may be accorded some weight, his or her clinical data can be readily extrapolated and evaluated within the tables and guidelines presented.[12]

In the present case, Dr. Friedland performed a comprehensive evaluation of appellant on October 4, 1999 but the physician did not provide an estimate of appellant's physical impairment under the A.M.A., *Guides*. Consequently, it was proper for Dr. Simpson to apply the A.M.A., *Guides* to the findings reported by Dr. Friedland on examination.[13] The Board has duly reviewed Dr. Simpson's January 30, 2000 report and finds that he supports his impairment estimates with appropriate reference to the A.M.A., *Guides*. As Dr. Simpson's report provides the only evaluation that conforms with the A.M.A., *Guides*, it constitutes the weight of the medical evidence.[14] Thus, the Board concludes that appellant has no greater than an 11 percent impairment of the left leg and a 6 percent impairment of the right leg.

The Board finds that the Office properly denied appellant's request for reconsideration on the merits under 5 U.S.C. § 8128.

Section 8128(a) of the Act vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.[15] The regulations provide that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.[16] When an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[17] Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.[18] Where a claimant fails to submit relevant evidence not previously of record or advance legal contentions not previously considered it is a matter of discretion on the part of the Office to reopen a case for further consideration under section 8128 of the Act.[19]

In this case, appellant's reconsideration request did not show that the Office erred in applying or interpreting a specific point of law. Appellant did not advance a relevant legal argument nor did she submit any new and relevant evidence. Because appellant did not satisfy

[12] *Michael D. Nielsen*, 49 ECAB 453 (1998).

[13] *Lena P. Huntley*, 46 ECAB 643 (1995); *Roel Santos*, 41 ECAB 1001 (1990).

[14] *Lena P. Huntley, supra* note 13.

[15] 5 U.S.C. § 8128; *see Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

[16] 20 C.F.R. § 10.606(b) (1999).

[17] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

[18] *Edward Matthew Diekemper*, 31 ECAB 224 (1979)

[19] *Gloria Scarpelli-Norman*, 41 ECAB 815 (1990); *Joseph W. Baxter*, 36 ECAB 228 (1984).

one of the three requirements of section 8128, the Office properly refused to perform a merit review.

The decisions of the Office of Workers' Compensation Programs dated April 17 and February 24, 2000 are hereby affirmed.

Dated, Washington, DC
February 19, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member